IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3925 OF 2005

M/s.Parnakuti Cooperative Housing
Society Limited : Petitioner
(Orig. Applicant)

V/s.

Pralhad Bhausaheb Gawade (since deceased)
through his legal heirs:
Smt.Revati Pralhad Gavade & Ors. : Respondents

...

Mr.S.N. Chandrachood for the petitioner.

Mrs.A.A. Agarwal for respondent nos.1a, 1b and 2 to 4.

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CORAM : S.A. BOBDE, J.

July 4, 2005.

P.C.:

1. Office objection regarding Vakalatnama in respect of the respondent no.1a is waived, in view of Mrs.Agarwal's statement that the petitioner has typed her name as "Revati" instead of "Laxmi".

2. Rule, returnable forthwith.

Mrs.Agarwal, learned counsel, appears and waives service of rule on behalf of the respondents nos.1a, 1b

and 2 to 4.

Heard by consent.

3. The petitioner has challenged the order dated 12.4.2005 at exh.1 passed by the learned District Judge, Pune, rejecting the application for transfer of the suit since no such suit is pending.

4. Peculiarly, Mr.Chandrachood, the learned counsel for the petitioner, accepts the position that no such suit is pending, but contends that MCA no.251 of 2002 is pending. According to the learned counsel, this application is for restoration of the suit.

5. Having heard the learned counsel for both the sides, I find the petition completely misconceived.

6. Mrs.Agarwal, learned counsel for the respondent nos.1a, 1b and 2 to 4, points out that the petitioner had filed Civil Suit no.453 of 1972 in which he prayed for the relief of compensation. This suit was dismissed. An appeal against that was withdrawn on 29.8.1989. Thereafter, MCA no.251/02 dated 15.10.2001 appears to have been filed in the course of execution proceedings. By this application, the petitioner has sought compensation

of Rs.6 lakhs which is the very relief sought by them in Civil Suit no.453 of 1972. It, however, appears that this MCA no.251 of 2002, which appears to be an application under section 47 of the C.P.C. and not under Order 9 Rule 13, as contended by the learned counsel for the petitioner, has also been dismissed on 18.2.2003. The petitioner had carried an appeal, being Misc. Civil Appeal no.67 of 2003, which was dismissed on 8.9.2003. The petitioner preferred Writ Petition no.7436 of 2004 which was allowed to be withdrawn on 10.2.2003. While withdrawing the petition, the petitioner sought liberty to apply under section 24, presumably on the basis that some suit is pending. As pointed out by the learned District Judge, however, and as is also apparent from the facts stated above, no such suit is pending.

7. It must be pointed out that the respondents had filed earlier Suit no.970 of 1962 which has been decreed in the respondents' favour. What has happened to Suit no.453 of 1972 filed by the petitioner has already been narrated above. In the circumstances, there is no infirmity in the order of the learned District Judge holding that there is no substance in the application under section 24 since there is no suit pending on the file of the Court. There is no merit in the petition which is hereby dismissed with

costs.

S.A. BOBDE, J.